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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,430	10/09/2001	Noel K. Hancock	10017267-1	6285

7590

12/09/2005

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EXAMINER

STERRETT, JONATHAN G

ART UNIT

PAPER NUMBER

3623

DATE MAILED: 12/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/973,430

Applicant(s)

HANCOCK ET AL.

Examiner

Jonathan G. Sterrett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10-09-2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10-09-01.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Summary*

1. **Claims 1-20** are pending in the application.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 1-4, 8-10 and 17-19** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kinra US 5,731,991**.

Regarding **Claim 1**, Kinra teaches:

**collecting multiple sets of performance parameter values**

**corresponding to results of testing each of the product samples**

Column 5 line 6-8, criterion scores (i.e. multiple sets of performance parameter values are collected) are collected by the computer memory. These scores correspond to the results of testing of product samples. –see also column 9 line 42-45.

**generating an evaluation report based upon the multiple sets of performance parameter values.**

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Column 10 line 11-16, an evaluation screen (i.e. report) is generated based upon evaluation product data, criteria, categories or sections (i.e. multiple sets of performance parameter values):

Kinra does not teach:

**at test facilities of each of the suppliers;**

However, Official Notice is taken that having test facilities at suppliers is old and well known in the art of supply chain management. Testing and evaluation of products at supplier facilities provides for the necessary quality control and verification so that quality is ensured prior to being shipped from the supplier.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Kinra, regarding providing evaluation of product samples to include the step of providing evaluations of product samples at test facilities of each of the suppliers, because it would ensure products meet quality standards prior to being shipped from the supplier.

Regarding **Claim 2**, Kinra teaches:

**wherein collecting multiple sets of performance parameter values comprises testing the product samples**

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column 4 line 17, management of test cases/scripts comprises testing the product samples in terms of how they handled the test cases/scripts.

Kinra does not teach:

**at test facilities of each of the suppliers;**

However, Official Notice is taken that having test facilities at suppliers is old and well known in the art of supply chain management. Prequalification of products at supplier facilities provides for the necessary quality control and verification so that quality is ensured prior to being shipped from the supplier.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Kinra, regarding providing evaluation of product samples to include the step of providing evaluations of product samples at test facilities of each of the suppliers, because it would ensure products meet quality standards prior to being shipped from the supplier.

Regarding **Claim 3**, Kinra teaches:

**wherein testing of product samples is controlled by the purchasing entity.**

Column 6 line 62-63, access to testing can be designated (i.e. controlling access to testing of samples – see also column 6 line 59-61).

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Kinra does not teach where the controlling is provided by the purchasing entity. However, official notice is taken that it is old and well known in the art of supply chain management for a purchasing entity of products to control the testing of said products. The direction and control of testing products by the purchasing entity ensures that standards and criteria of the purchasing entity are being measured against during the test to ensure an appropriate buying decision.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Kinra, regarding providing access control of product samples to include the step of where the testing is controlled by the purchasing entity, because it would ensure products are properly qualified/disqualified according the purchasing entity's standards prior to the buying decision .

Regarding **Claim 4**, Kinra teaches:

**Wherein a user prevents unauthorized access to the product samples during testing.**

Column 6 line 59-61, a system user can prevent unauthorized access to product samples during testing. Kinra teaches that the system can provide this functionality to ensure that users evaluate the product only in their particular area of expertise.

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Kinra does not teach where the preventing of unauthorized access is provided by the purchasing entity. However, official notice is taken that it is old and well known in the art of supply chain management for a purchasing entity of products to control the testing of said products, including unauthorized access to product samples.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Kinra, regarding providing access control of product samples to include the step of where the purchasing entity prevents unauthorized access to product samples, because it would ensure product features are properly evaluated by those having the requisite experience to provide the evaluation.

Regarding **Claim 8**, Kinra teaches:

**wherein the product samples are tested at test facilities of each of the suppliers under substantially similar test conditions.**

Column 1 line 50-55, product evaluation is conducted according to a standardized scheme (i.e. substantially similar test conditions).

Column 8 line 25-29, product scores are compared according to the same criteria.

Official Notice is also taken that it is old and well known in the art of measurement to test product samples according to substantially similar test

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conditions so that meaningful comparisons can be made. Otherwise, if the test conditions are substantially different, then an invalid comparison would be made.

Regarding **Claim 9**, Kinra teaches:

**analyzing the multiple sets of performance parameters.**

Column 8 line 1-10, providing a bar chart with comparative values of two different products in a single category (See Figure 2 108b & #82) provides for analyzing multiple sets of performance parameters. In this example the analysis provided by the bar charts indicates that one product is stronger in configuration management. Figure 2 includes many similar analyses of multiple sets of performance parameters.

Regarding **Claim 10**, Kinra teaches:

**compiling a single consistent set of performance parameter values from the multiple sets of performance parameter values.**

Column 8 line 54-57, normalized criterion score in the prototyping and simulation criterion is provided at the end of each of the product 1 and product 2 value columns. See also Figure 2 #122 and 111 for the compiled single consistent set of performance parameter values.

**Claims 17-19** recite similar limitations as those recited in **Claims 1-4 and 8-10** above, and are therefore rejected under the same rationale.



4. **Claim 5** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Kinra US 5,731,991** in view of **Schoneker**.

**Schoneker**, David R; "Changing the supply-chain controls for excipients—Part 1: The IPEC-Americas 'Certificate of Analysis guide for bulk pharmaceutical excipients'", June 2000, Pharmaceutical Technology, Vol. 24, Iss. 6, p.42, ProQuest ID 55656380.

Regarding **Claim 5**, Kinra teaches controlling access to the evaluation of product samples, as per claim 4 above but does not teach:

**wherein the purchasing entity maintains custody of the product samples during testing.**

Schoneker teaches:

**wherein the purchasing entity maintains custody of the product samples during testing.**

Page 4 paragraph 1 line 1-4, the user of material from a supplier (i.e. the purchasing entity) conducts their own tests on material provided by the supplier to establish the reliability of the supplier's COA's. This would require the purchasing entity maintaining custody of the product samples during testing (rather than the supplier, since it is the supplier's own COA results that are being verified).

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Schoneker further teaches that this step is necessary to ensure the supplied material meets specifications (line 4 of paragraph 1).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Kinra, regarding providing product testing, to include the step of where the purchasing entity maintains custody of the product samples during testing, because it would ensure that the supplied material met the specifications of the purchasing entity.

5. **Claims 6 and 7** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kinra US 5,731,991** in view of **Stewart**.

**Stewart**, Doug; "Suspicious for a living / behind the scenes with bumper bashers, dishwasher debunkers, chocolate chip chompers and condom demolition experts – the folks who test products for Consumer Reports", Oct 1993, San Francisco Chronicle, Calif; p.7.Z.1, ProQuest ID 67113483.

Regarding **Claim 6**, Kinra does not teach:

**further comprising removing identification information from the product samples before testing.**

Stewart teaches:

**further comprising removing identification information from the product samples before testing.**

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Page 2 paragraph 6 line 1-4, a blind test is conducted with expensive perfume (Eau de Gucci). A blind test comprises removing identification information from the product samples before testing. This prevents the tester from being biased either for or against the particular sample. In this case removing the identification information from expensive perfume prevents a rating from being assigned that is biased higher than it would be under a blind test, since the tester is unaware the product is expensive. This ensures a product is objectively rated.

Page 3 paragraph 9 line 1-3, chocolate chip cookies are tested with only numbers assigned to them, in this example, a number "28" is assigned to a cookie being tested.

Both Kinra and Stewart address product evaluation, thus both Kinra and Stewart are analogous art.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Kinra, regarding providing product testing, to include the step of removing product identification from the product samples, as taught by Stewart, because it would ensure that the product testing was performed objectively.

Regarding **Claim 7**, Kinra does not teach:

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**wherein removing identification information comprises removing from each product any information from which the product supplier is identifiable.**

Stewart teaches:

**wherein removing identification information comprises removing from each product any information from which the product supplier is identifiable.**

Page 2 paragraph 6 line 1-4, a blind test is conducted with expensive perfume (Eau de Gucci). A blind test comprises removing identification information from the product samples before testing. This prevents the tester from being biased either for or against the particular sample. In this case removing the identification information from expensive perfume prevents a rating from being assigned that is biased higher than it would be under a blind test, since the tester is unaware the product is expensive. This ensures a product is objectively rated. This blind testing includes not only the removal of product identification, but also supplier identification.

Page 3 paragraph 9 line 1-3, chocolate chip cookies are tested with only numbers assigned to them, in this case, a number "28" is assigned. This blind testing includes not only the removal of product identification, but also supplier identification.

Both Kinra and Stewart address product evaluation, thus both Kinra and Stewart are analogous art.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Kinra, regarding providing product testing, to include the step of removing product and supplier identification from the product samples, as taught by Stewart, because it would ensure that the product testing was performed objectively.

6. **Claims 11-14 and 20** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kinra US 5,731,991** in view of the **Performance Measurement Group** (hereinafter **PMG**).

"Welcome to the Performance Measurement Group, LLC",  
www.pmgbenchmarking.com, web.archive.org webpage of October 6, 2000,  
pp.1-4,  
web.archive.org/web/20001006043000/www.pmgbenchmarking.com/ps\_pdbbs\_fa  
q.html.

Regarding **Claim 11**, Kinra does not teach:

**transmitting the evaluation report to one or more of the suppliers.**

PMG teaches:

**transmitting the evaluation report to one or more of the suppliers.**

Page 2 paragraph 7 line 1-5, subscribers can access the benchmarking system to access the system.

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Page 2 paragraph 5 line, mini-presentations summarize the benchmarking results and comprise a report that is downloaded (i.e. transmitting).

Both Kinra and PMG deal with comparative assessment related to products, thus both Kinra and PMG are analogous art.

PMG teaches that suppliers receiving a copy of an evaluation report allows them to compare their performance to that of other suppliers (page 2 paragraph 5 line 3-7).

It would have been obvious to one of ordinary skill in the art to modify the teachings of Kinra, regarding providing comparative evaluation reports, to include the step of transmitting this report to one or more of the suppliers, as taught by PMG, because it would allow suppliers to benchmark their performance against that of other suppliers.

Regarding **Claim 12**, Kinra does not teach:

**collecting a fee from a given supplier before transmitting the evaluation report to the given supplier.**

PMG teaches:

**collecting a fee from a given supplier before transmitting the evaluation report to the given supplier.**

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Page 2 paragraph 6 line 1-2, subscriptions (i.e. paying a fee that is collected) are sold for companies to buy the benchmarking services.

Both Kinra and PMG deal with comparative assessment related to products, thus both Kinra and PMG are analogous art.

PMG teaches that suppliers receiving a copy of an evaluation report allows them to compare their performance to that of other suppliers (page 2 paragraph 5 line 3-7).

It would have been obvious to one of ordinary skill in the art to modify the teachings of Kinra, regarding providing comparative evaluation reports, to include the step of collecting a fee from the supplier, as taught by PMG, because it would allow suppliers to receive benchmarking reports to compare their performance against that of other suppliers.

Regarding **Claim 13**, Kinra teaches providing comparison (i.e. benchmarking) of product samples (Column 6 line 7-15) but does not teach:

**customizing the evaluation report so that a supplier receiving the evaluation report is able to benchmark performance without identifying other suppliers.**

PMG teaches:

**customizing the evaluation report so that a supplier receiving the evaluation report is able to benchmark performance without identifying other suppliers.**

Page 3 paragraph 2 line 2-6, the identity of other suppliers is removed so that company-specific data is not revealed. This ensures confidentiality for companies wishing to participate in the benchmarking study.

Both Kinra and PMG deal with comparative assessment related to products, thus both Kinra and PMG are analogous art.

PMG teaches that suppliers receiving a copy of an evaluation report allows them to compare their performance to that of other suppliers (page 2 paragraph 5 line 3-7).

It would have been obvious to one of ordinary skill in the art to modify the teachings of Kinra, regarding providing comparative evaluation reports, to include the step of collecting a fee from the supplier, as taught by PMG, because it would allow suppliers to receive benchmarking reports to compare their performance against that of other suppliers.

Regarding **Claim 14**, Kinra does not teach:

**wherein the evaluation report is customized by encoding identification information of all suppliers other than the receiving supplier.**



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PMG teaches:

**wherein the evaluation report is customized by encoding identification information of all suppliers other than the receiving supplier.**

Page 2 paragraph 5 line 3-5, evaluation reports are customized for individual suppliers and provide a comparison of the supplier to average and best-in-class (BIC) for a particular metric. The BIC metric does not identify the supplier, only what the metric value is.

Page 3 paragraph 2 line 2-4, company data is kept proprietary by only showing metrics in aggregate, other than for BIC and avg. metrics, as discussed above.

The confidentiality taught by PMG encourages companies to participate in the benchmarking. Official Notice is taken that it is old and well known in the art of management that company data that reflects internal performance is considered sensitive and proprietary. The comparison between a company's data and that of the aggregate (i.e. average and as well BIC), provides for the company to compare itself to the industry group as a whole for the purpose of knowing where weaknesses lie.

Both Kinra and PMG deal with comparative assessment related to products, thus both Kinra and PMG are analogous art.

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It would have been obvious to one of ordinary skill in the art to modify the teachings of Kinra, regarding providing comparative evaluation reports, to include the step of customizing the report to ensuring confidentiality of suppliers, as taught by PMG, because it would allow suppliers to receive benchmarking reports to compare their performance against that of other suppliers and maintain confidentiality of the suppliers' data.

**Claim 20** recites similar limitations as those recited in **Claims 11-14** above, and is therefore rejected under the same rationale.

7. **Claims 15 and 16** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kinra US 5,731,991** in view of **General Motors Supplier Development General Procedure "Evaluation and Accreditation of Supplier Test Facilities GP10"** (hereinafter **GP10**).

"General Motors Supplier Development – General Procedure: Evaluation and Accreditation of Supplier Test Facilities GP10", Published by GM's Supplier Development Administration, GM1796, February 1990, pp.1-19.

Regarding **Claim 15**, Kinra teaches compiling a data structure relating parameter values for each product sample and providing an evaluation report that provides a comparison of product samples (Column 6 line 7-15 and Figure 2) but does not teach:

**wherein generating the evaluation report comprises compiling a data structure relating parameter values and supplier test facilities for each product sample.**

GP10 teaches:

**compiling a data structure relating parameter values and supplier test facilities for each product sample.**

Page 17 Item B No. 5, product samples are identified and reports identifying the product samples are traced (i.e. tracked and recorded).

Page 5, GP10 teaches that each facility is recorded and qualified as a supplier test facility. Standards are applied to these test facilities to ensure that different test facilities provide as repeatable measurements across these different test facilities as possible (see also page 6 Item 6a where qualification of test equipment is discussed).

Both GP10 and Kinra address product sample evaluation, thus both GP10 and Kinra are analogous art.

GP10 teaches maintaining records and ensuring qualification for supplier test facilities is necessary to ensure traceability for supplier test results (page 17 Item B No. 5).

It would have been obvious to one of ordinary skill in the art to modify the teachings of Kinra, regarding providing comparative evaluation reports, to include

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the step of including supplier test facility data for individual test samples, as taught by GP10, because it would provide traceability for the test results provided for product samples.

Regarding **Claim 16**, Kinra teaches:

**wherein generating the evaluation report comprises producing a graph displaying one or more performance parameter values for each of the product samples.**

Column 6 line 7-15, the screen generator produces a comparison graph the displays a performance parameter value for two different products so that a comparison can be made graphically of the two products.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 5090734 by Dyer discloses a method for evaluation of consumer goods by test panel members.

US 6484063 by Liou discloses a system and method for inspecting tooling for feasibility.

US 5526257 by Lerner discloses a product evaluation system.

Anonymous, "QS-9000 (quality system model for the automotive industry), June 1995, Automotive Engineering, v103, n6, p61(5), Dialog 08017736 17329822.

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Handfield, Robert B; Ragatz, Gary L; Petersen, Kenneth J; "Involving Suppliers in New Product Development", Fall 1999, California Management Review, Berkeley, Vol. 42, Iss. 1, p. 59(24), ProQuest ID 46827562.

Foti, Ross; "CERP: Helping Foundaries identify routes to reduced air emissions", Dec 1999, Modern Casting, Des Plaines, Vol. 89, Iss. 12, p21(4), ProQuest ID 47668792.

Olsen, Bill; "Bottlers Sharpen Spears for San Diego Cola War", May 1985, San Diego Business Journal, Vol. 5, Iss. 37, Sec. 1 p. 1, ProQuest ID 6226420.

Rogers, Hank; "Benchmark your plant against TQM best-practices plants", May 1998, Quality Progress, Vol. 31, Iss. 5, p.51(5), ProQuest ID 29287206.

Avery, Susan; "Supply Chain Management at Otis reins in global spending", June 1, 2000, Purchasing, Boston, Vol. 128, Iss. 9, p.53(6), ProQuest ID 55348101.

O'Neal, Charles, "Concurrent Engineering with early supplier involvement: A cross-functional challenge", Spring 1993, International Journal of Purchasing and Materials Management, Tempe, Vol. 29, Iss. 2, p. 2(8), ProQuest ID 590042.

Hjorth-Andersen, Chr.; "The concept of quality and the efficiency of markets for consumer products", Sept 1984, Journal of Consumer Research, 11, 2, ABI/INFORM Global, p.708.

Squires, Paula Crawford; "If People Use It, Consumers Union Tests It Tour Provides Meeting Highlight for Faithful Magazine Subscribers", Oct 23, 1994, Richmond-Times Dispatch, p.E-1, ProQuest ID 613856861.

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Ulrich, Karl T; Pearson, Scott; "Assessing the importance of design through product archeology", Mar 1998, Management Science, Linthicum, Vol. 44, Iss. 3, p. 352(16), ProQuest ID 28581239.

Dowling, Tim; "Consumer: Breaking Point. Welcome to the extraordinary world of product testing", Sep 2000, The Guardian, Manchester UK, p.14, ProQuest ID 59695973.

Olshavky, Richard W.; Rosen, Dennis L.; "Use of Product-Testing Organizations' Recommendations as a Strategy for Choice Simplification", Summer 1985, The Journal of Consumer Affairs, 19, 1; ABI/INFORM Global, p.118.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan G. Sterrett whose telephone number is 571-272-6881. The examiner can normally be reached on 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 571-272-6729. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through

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Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JCS

JGS 11-18-2005

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